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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 72-1673

RALPH OLIVER DENNY,
*Petitioner*

vs.

THE STATE OF ALABAMA,
*Respondent*

**PETITION FOR WRIT OF CERTIORARI TO THE ALABAMA COURT OF CRIMINAL APPEALS**

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**IN THE**
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1973

NO

RALPH OLIVER DENNY,

Petitioner

vs.

THE STATE OF ALABAMA,

Respondent

## PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Your Petitioner, Ralph Oliver Denny, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Court of Criminal Appeals of Alabama rendered on December 12, 1972, which judgment affirmed the conviction of Ralph Oliver Denny in the Circuit Court of Jefferson County, Alabama, for the crime of indecent molestation of a child under the age of sixteen.

A timely Application for Rehearing in the Alabama Court of Criminal Appeals was denied without opinion on January 23, 1973.

A timely Application for Writ of Certiorari was filed in the Supreme Court of Alabama and was denied, without opinion, on March 15, 1973.

## OPINION BELOW

The opinion of the Alabama Court of Criminal Appeals has been reported at 274 So. 2d 650, cert. den. 274 So. 2d 651, and appears in the Appendix hereto.

## JURISDICTION

The judgment of the Alabama Court of Criminal Appeals was entered on December 12, 1972, and appears in the Appendix hereto. A timely Application for Rehearing was denied on January 23, 1973.

A Petition for Writ of Certiorari, timely filed in the Supreme Court of Alabama, was denied on March 15, 1973, and the order thereon appears in the Appendix.

The statutory provision believed to confer jurisdiction upon this Court to review the judgment of the Alabama Court of Criminal Appeals is 28 U.S.C. §1257(3).

## QUESTIONS PRESENTED FOR REVIEW

1. Whether or not Alabama denied Petitioner Denny his Fourteenth Amendment right to equal protection of the law by allowing his conviction of a felony on the uncorroborated testimony of an accomplice, contrary to Title 15, §307, Code of Alabama.

2. Whether or not Alabama denied Petitioner Denny his Sixth Amendment right to trial by an impartial jury where the trial judge gave a misleading and erroneous instruction to the jury.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

*Constitution of the United States*, Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed....

*Constitution of the United States*, Amendment XIV:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*United States Code, Annotated*, Title 28:

§1257(3) State courts; appeal, certiorari

Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * *

(3) By writ of certiorari, . . . where any title, right, privilege or immunity is specially set up or claimed

under the Constitution, . . . of . . . the United States.

*Code of Alabama*, 1940 (Recomp. 1958), Title 14, §326(2):

§326(2). DEFINITION; PUNISHMENT — It shall be unlawful for any person to take or attempt to take any immoral, improper, or indecent liberties with any child of either sex under the age of sixteen years, with intent of arousing, appealing to, or gratifying the lust or passions or sexual desires, either of such person or of such child or of both such person and such child, or to commit, or attempt to commit any lewd or lascivious act upon or with the body, or any part or member thereof, of such child, with an intent of arousing, appealing to, or gratifying the lust or passions or sexual desires, either of such person or of such child, or of both such person and such child. Provided, this section shall not apply to the enumerated acts where the purpose of the person committing such act or acts is to render medical or surgical treatment, or when the persons are married legally one to another.

Any person violating this section shall be guilty of a felony and shall upon his first conviction be punished by confinement in the penitentiary for a period not to exceed five years, or by a fine not to exceed five thousand dollars, or by both fine and imprisonment; any person who shall be convicted for the second violation of this section shall be guilty of a felony and shall be punished by confinement in the penitentiary for not less than two nor more than ten years; and any person who shall be convicted for the second violation of this section shall not be eligible for probation.

*Code of Alabama*, 1940 (Recomp. 1958), Title 15, §307:

> §307. TESTIMONY OF ACCOMPLICES; MUST BE CORROBORATED TO AUTHORIZE CONVICTION OF FELONY. A conviction of felony cannot be had on the testimony of an accomplice, unless corroborated by other evidence tending to connect the defendant with the commission of the offense; and such corroborative evidence, if it merely shows the commission of the offense or the circumstances thereof, is not sufficient.

## STATEMENT OF THE CASE

Your Petitioner was convicted of indecent molestation of a male child under sixteen years of age under Title 14, §326(2), *Code of Alabama*, 1940 (Recomp. 1958), and was sentenced to five years imprisonment and a fine of five thousand dollars.

The indictment contained two counts, each charging a criminal sexual act by the Petitioner with a male child under the age of sixteen years. The Petitioner entered a plea of not guilty to the indictment, and the case was tried before a jury on June 15, 1971.

Upon the trial of the case, the State's first witness was Dayton Thomas White, a fourteen year old male alleged to be the victim of the offense charged in the indictment. The witness testified that sometime during March, 1970, he and a certain Robert Beasley visited the Defendant's house in Birmingham and at that time the Defendant inserted his penis into the boy's "rump." The witness testified that this occurred in the presence of Robert Beasley, although the witness was unable to identify with any particularity either the date or the place of the alleged occurrence.

On cross-examination the witness admitted that he had never made any complaint regarding this or any similar incident to anyone. He further testified that a friend of his, Carroll Henderson, was living with the Petitioner at the time of these alleged occurrences. Thereafter, the witness testified, *inter alia*, as follows:

"Q Tell this jury how many times you went to Mr. Denny's

house the whole time ... in your best judgment?

A Several times, I don't know how many.

Q As a matter of fact, Tommy, isn't it true you went up there three and five times a week for a two or three month period?

A About one to three times, I think. That is about all.

Q For about two or three months, didn't you?

A No, sir, about two months, something like that.

Q You willingly, according to your testimony, participated in this, did you not?

A Yes, sir.

Q And you say he did this to you how many times?

A Several times.

Q How many times? Ten? Twelve?

A Well, yes, sir, something like that."

The State called as its next witness Robert Beasley who testified that during 1970 he had observed the Petitioner placing his penis into Dayton White's rectum. The witness further testified that he had also engaged in the same alleged conduct with the Petitioner shortly thereafter:

"Q Did he then do anything to you?

A Yes.

Q What did he do to you?

A The same thing.

Q On the first occasion -- in other words. the first time Tommy went up there you say he put his thing in Tommy's thing, is that right?

A Yes, sir.

Q Did he then stop on this first occasion and do the same thing to you?

Yes, sir.

Q Was that the same time and was that the same night or afternoon or whenever it was?

A It wasn't at the same time.

Q Well, I don't mean at the same time, that is a physical impossibility. I mean he did Tommy then he so-called did you?

A Yes, sir.

Q How long was it when he did you?

A Right after he done Tommy.

Q Right after he done Tommy?

A Yes, sir.

Q Did you voluntarily and willingly let him do this?

A Yes, sir.

Q I mean he didn't force himself on you, did he?

A He wanted to.

Q You let him do it, didn't you?

A Yes, sir.

Q What were you doing when he was doing this to Tommy?

A I was just sitting on his bed.

Q How were you dressed?

A Had my clothes on.

Q How was Tommy dressed?

A Had his off, Tommy did.

Q What all did he have on? Nothing?

A Nothing.

Q How was Mr. Denny dressed?

A He had on nothing.

Q Had on what?

A Nothing.

Q Where was Carroll Henderson, the next room?

A Yes, sir.

Q Did you all go up the next day after this happened on the first occasion?

A Yes, sir.

Q Did he do it to you again?

A Yes, sir.

Q Huh?

A Yes, sir.

Q You let him do it on that occasion?

A Yes, sir."

The State called as its next witnesses the mother of Dayton Thomas White, and a female police officer of the City of Birmingham. The substance of their testimony is omitted herein since it has no pertinence to the issues presented to the Court.

Thereafter, the State rested its case and the Petitioner moved to exclude the State's evidence on the ground that there had not been sufficient corroboration of the testimony of an accomplice, under Title 15. §307, *Code of Alabama*, to permit the case to go to the jury. The Court overruled the Defendant's motion on the ground that the testimony of Robert Beasley constituted corroboration.

The Defendant called as his first witness a certain Carroll Henderson who testified that he had been living with the Petitioner at the time of the alleged conduct and that he knew both Dayton White and Robert Beasley. The witness stated that he had been present at the Petitioner's residence when White and Beasley would visit and that there was never, at any time, any impropriety of the sort charged in the indictment.

Ralph Oliver Denny, your Petitioner, then took the stand and testified in his own behalf, denying the conduct charged in the indictment. The Petitioner then rested his case.

In rebuttal the State recalled Dayton Thomas White and his mother. Thereafter, the Petitioner's renewed Motion for a Directed Verdict was overruled and the State and the Petitioner argued their cases to the jury.

The Court's oral charge to the jury did not specifically refer to Title 15, §307, of the *Code of Alabama* which prohibits conviction of a felony on the uncorroborated testimony of an accomplice. However, the Court did give the following charge at the request of your Petitioner:

> "39. I charge you, ladies and gentlemen of the jury, that if you believe from the evidence in this case that Thomas White was an accomplice because he willingly submitted to the acts as shown by the testimony, then in order for you to convict the defendant in this case, you must believe beyond a reasonable doubt and to a moral certainty the testimony of Robert Beasley."

Immediately thereafter the Court stated as follows:

> "Ladies and gentlemen, I would like to say one thing further to this particular statute. Consent has nothing to do with it. A child under the age of sixteen is incapable under the law of giving his or her consent."

The Court then refused to give the affirmative charge at the request of your Petitioner, and the Court also refused to give the following requested charge:

> "38. The Court charges you, ladies and gentlemen, that if you believe from the evidence that Thomas White, the alleged victim in this case, was a willing accomplice to the alleged criminal act, then it is your duty to find the Defendant not guilty."

Thereafter, the case was submitted to the jury for its consideration and the jury returned a verdict of guilty.

On June 18, 1971, the Defendant gave notice of appeal and thereafter, within the time provided by law, the Defendant filed his Motion for a New Trial, which was denied on September 24, 1971.

On June 22, 1971, the Defendant filed a petition for a free transcript pursuant to the provisions of Title 15, Sections 380(14)–(25), *Code of Alabama*, 1940 (Recomp. 1958), and an affidavit in support thereof. This petition was denied on September 24, 1971.

A timely appeal was taken to the Court of Criminal Appeals of Alabama which, on December 12, 1972, affirmed

the decision of the trial court (274 So. 2d 650). Within the time allowed by law an Application for Rehearing was filed with the Court of Criminal Appeals of Alabama and the said Application was overruled on January 12, 1973.

Thereafter, a Petition for Certiorari was filed with the Supreme Court of Alabama, and said Petition was denied on March 15, 1973 (274 So. 2d 651).

## REASONS FOR GRANTING THE WRIT

### I.

### THE DECISION BELOW DENIES PETITIONER DENNY HIS BASIC FOURTEENTH AMENDMENT RIGHT TO EQUAL PROTECTION OF THE LAW BY IGNORING THE ALABAMA STATUTORY REQUIREMENT THAT THE TESTIMONY OF AN ACCOMPLICE BE CORROBORATED.

At issue here is the State court's unequal application of a well-established statute of Alabama requiring that the testimony of an accomplice be corroborated. In its opinion, the Alabama appellate court stated:

> "In a case involving this self-same statute (child molestation), *Alldredge*, 45 Ala. App. 171, 227 So. 2d 803, this Court said: 'No requirement of corroboration is presented in this record. Blocker v. State, 40 Ala. App. 658, 120 So. 2d 924.'"

However, an examination of the *Alldredge* case reveals that the complaining witness was a thirteen year old boy and the decision of the court hinged upon the presumption in Alabama law that an infant between the ages of seven and fourteen is incapable of committing a felony. *Key v. State*, 4 Ala. App. 76, 58 So. 946 (1912). In the case at hand, the evidence is uncontroverted that both juvenile participants were fourteen years of age or older at the time of the alleged incident. For purposes of responsibility in criminal law a person fourteen years of age or older is recognized in Alabama as having reached the age of discretion. *Reynolds v. State*, 154 Ala. 14, 45 So. 894 (1908); *Key v. State*, supra; *Darden v. State*, 12 Ala. App. 165, 68 So. 550 (1915); *LaBryer v. State*, 46 Ala. App. 33, 222 So. 2d 361 (1969).

In order to sustain the conviction of Petitioner Denny, the State was required to corroborate the testimony of Dayton Thomas White. The *Code of Alabama* (1940), Title 15, makes a specific requirement as to corroboration:

> "Section 307. A conviction of felony cannot be had on the testimony of an accomplice, unless corroborated by other evidence tending to connect the defendant with the commission of the offense; and such corroborative evidence, if it merely shows the commission of the offense or the circumstances thereof, is not sufficient."

The trial court found this corroboration in the testimony of Robert Beasley, a witness who had initially taken White to the Petitioner's residence, who described the alleged activity as a joint affair, who admitted that his participation was willing and voluntary, who accepted payment from the Defendant for his participation, and who allegedly participated in a similar act. This testimony leads to the inevitable conclusion that the witness was an accomplice whose testimony could not be used to corroborate the testimony of White, who was likewise an accomplice.

In the case of *Leonard v. State*, 43 Ala. App. 454, 192 So. 2d 461 (1966) the Court stated:

> "Under this statute (Title 15, §307), using one accomplice to corroborate another accomplice gives a quantitative sum of zero plus zero. *Morris v. State*, 17 Ala. App. 126, 82 So. 574; *Evans v. State*, 42 Ala. App. 587, 172 So. 2d 796; *People v. White*, 62 Hun. 114, 16 NYS 571."

In 1960 the requirement of corroboration in sexual offenses was stated by the Court of Appeals of Alabama. In the case of *Blocker v. State*, 40 Ala. App. 658, 120 So. 2d 924 (1960), a case likewise based on molestation of a child under the age of sixteen years, the Court noted that *Fuller v. State* infra, stated the rule as to corroboration which should govern in such cases. That case held that in a prosecution for sexual offenses where a participating witness was a willing participant in the commission of the act, a conviction could not properly be based on his uncorroborated testimony. *Fuller v. State*, 39 Ala. App. 90, 94 So. 2d 788 (1957).

The equal protection clause of Amendment Fourteen of the Constitution governs the action of a state through its courts. *Shelley v. Kraemer*, 68 S. Ct. 836, 334 U.S. 1, 92 L. Ed. 1161 (1948). It is clear that the trial court as well as the appellate courts of Alabama have denied Petitioner Denny the equal protection afforded him by the provisions of Title 15, Section 307, of the *Code of Alabama*.

## II.

## THE DECISION BELOW DENIES PETITIONER DENNY HIS SIXTH AMENDMENT RIGHT TO TRIAL BY AN IMPARTIAL JURY.

At the conclusion of its oral charge, the trial court read the following instruction requested by the Defendant Denny:

> "39. I charge you, ladies and gentlemen of the jury, that if you believe from the evidence in this case that Thomas White was an accomplice because he willing (sic) submitted to the acts as shown by the testimony, and in order for you to convict the defendant in this case, you must believe beyond a reasonable doubt and to a moral certainty the testimony of Robert Beasley."

Thereafter, however, the Court stated to the jury:

> "THE COURT: Ladies and gentlemen, I would like to say one thing further to this particular statute. *Consent has nothing to do with it.* A child under the age of sixteen is incapable under the law of giving his or her consent." (Emphasis supplied)

It is a long-established rule in Alabama that while the Court may explain to the jury the meaning of written charges given at the request of a party, it may not qualify, limit or modify such charges. *Bailum v. State*, 17 Ala. App. 679, 88 So. 200 (1921); *Harris v. State*, 24 Ala. App. 59, 129 So. 795 (1930); *Dickey v. State*, 21 Ala. App. 644, 111 So. 425 (1927). Furthermore, the Court cannot legally take from the jury, by instruction, its right to weigh the evidence presented. *Greenleaf v. Birth*, 34 U.S. 292, 9 Pet. 292, 9 L. Ed. 132 (1835).

Contrary to the Court's misleading statement, consent had a great deal to do with the case at hand and went directly to the pivotal issue of whether the State's witnesses were, in fact, accomplices. The Court erroneously stated that a child under the age of sixteen may not give his or her consent, yet a long line of Alabama cases, cited previously, holds that a child above the age of fourteen may be criminally responsible for his acts. Furthermore, such an erroneous statement by the Court would effectively remove from the jury's consideration the question of whether the two primary State's witnesses were voluntary of involuntary participants in the acts alleged. With the question of consent removed from their consideration, the jury would have no basis upon which to determine whether those witnesses were accomplices or not.

> "Whether he (the pathic) consented is a question for the jury in all cases where the evidence is at all doubtful." *Fuller v. State*, supra.

The Court further infringed upon the impartiality of the jury when it refused to give the following requested charge:

> "38. The Court charges you, ladies and gentlemen, that if you believe from the evidence that Thomas White, the alleged victim in this case, was a willing accomplice to the alleged criminal act, then it is your duty to find the defendant not guilty."

However, the case of *LaBryer v. State*, supra, was reversed by the Alabama Court of Appeals for failure to give the following nearly identical charge:

> "2 --- I charge you, gentlemen of the jury, that if you believe from the evidence that the said Robert *** (the pathic) was a willing accomplice to the alleged criminal act then it is your duty to find the defendant not guilty."

The decision below, under the totality of the circumstances, operates to deprive Petitioner Denny of his basic constitutional right to trial by an impartial jury.

## CONCLUSION

To protect the fundamental constitutional rights of equal protection of the law and trial by an impartial jury, a writ of certiorari should issue to review the judgment and opinion of the Alabama Court of Criminal Appeals.

Respectfully submitted,

William B. McCollough, Jr.
McCollough & McCollough
910 Frank Nelson Building
Birmingham, Alabama 35203

COUNSEL FOR PETITIONER

June 13, 1973

## CERTIFICATE OF SERVICE

I, William B. McCollough, Jr., attorney for Ralph Oliver Denny, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 13th day of June, 1973, I served three copies of the foregoing Petition for Writ of Certiorari to the Alabama Court of Criminal Appeals on the State of Alabama as follows:

By mailing in the United States Mail three copies of same in a duly addressed envelope with first class postage prepaid to the Honorable William J. Baxley, Attorney General of the State of Alabama, Office of the Attorney General, State of Alabama Administrative Building, Montgomery, Alabama 36104.

WILLIAM B. McCOLLOUGH, JR.
Attorney for Ralph Oliver Denny
910 Frank Nelson Building
Birmingham, Alabama 35203

# APPENDIX

DECEMBER 12, 1972

**THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT**

**THE ALABAMA COURT OF CRIMINAL APPEALS**

OCTOBER TERM, 1972–73

6 Div. 300

Ralph Oliver Denny

v.

State

Appeal from Jefferson Circuit Court

CATES, PRESIDING JUDGE

Indecent molestation of a child under the age of 16: sentence, five years in the penitentiary. Michie's Code, T. 14, §326 (2) as amended.

I

Appellant's first claim of error is that the trial court erred in allowing (over objection) a policewoman to testify that she went to see the defendant and other persons. The State in effect, appellant argues, was trying to bolster the testimony of its other witnesses.

The State contends, however, that this is not so; that the purpose of the testimony was to show an early complaint by the child and the ensuing investigation.

Since nothing in the nature of an inculpatory admission or prejudicial conduct came out in this testimony, we consider this evidence altogether harmless. Supreme Court Rule 45.

## II

The trial judge gave one of the defendant's written requested charges and thereafter added, on his own, "Consent has nothing to do with it. A child under the age of 16 is incapable of giving his or her consent." To this remark no exception was taken. Hence, there is no matter reserved for our consideration. See *Hubbard*, 283 Ala. 183, 215 So. 2d 261.

## III

The third point raised by appellant is a claim that the testimony of the victim of this crime is required to be corroborated and that another boy who was present on two occasions was, in effect, another accomplice of the defendant.

This construction of §307, T. 15, 1940 Code, is impermissible. The statute about child molestation, very much like the statutes against carnal knowledge of girls under the age of consent, is directed at acts toward children and not at acts participated in by two persons, as in the case of say, sodomy, as illustrated in *LaBryer*, 45 Ala. App. 33, 222 So. 361.

In a case involving this selfsame statute, *Alldredge*, 45 Ala. App. 171, 227 So. 2d 803, this Court said:

> "No requirement of corroboration is presented in this record. *Blocker v. State*, 40 Ala. App. 658, 120 So. 2d 924."

Having considered the entire record under T. 15, §389, Code 1940, we are at the conclusion that the judgment below is due to be AFFIRMED. "All the Judges concur."

Ralph Oliver DENNY

v.

STATE.

6 Div. 300.

of Criminal Appeals of Alabama.

Dec. 12, 1972.

Rehearing Denied Jan. 23, 1973.

endant was convicted in the Circuit efferson County, Joseph J. Jasper, decently molesting a child under age ars, and he appealed. The Court of l Appeals, Cates, P. J., held that boy who was present on two occa- s not another accomplice of defend- purposes of statute providing that y of accomplices must be corrobo- authorize conviction of felony.

irmed.

tiorari denied, 289 Ala. —, 274 So.

1. Criminal Law ⇐1186.4(5)

Where nothing in nature of an inculpatory admission or prejudicial conduct came out in policewoman's testimony that she went to see defendant and other persons, Court of Criminal Appeals would consider such evidence harmless. Supreme Court Rules, rule 45.

2. Criminal Law ⇐1053

Where no exception was taken to remark made by trial judge after he gave one of defendant's written requested charges, there was no matter reserved for consideration by Court of Criminal Appeals.

3. Criminal Law ⇐507(1)

Another boy who was present on two occasions of alleged indecent molestation of a child under age of 16 was not another accomplice of defendant for purposes of statute providing that testimony of accomplices must be corroborated to authorize conviction of felony. Code of Ala., Tit. 14, § 326(2), Tit. 15, § 307.

4. Infants ⇐13

Statute governing child molestation is directed at acts toward children and not at acts participated in by two persons. Code of Ala., Tit. 14, § 326(2).

McCollough, McCollough & Callahan, Birmingham, for appellant.

William J. Baxley, Atty. Gen., and Samuel L. Adams, Asst. Atty. Gen., for the State.

CATES, Presiding Judge.

Indecent molestation of a child under the age of 16: sentence, five years in the penitentiary. Michie's Code, T. 14, § 326(2) as amended.

I

Appellant's first claim of error is that the trial court erred in allowing over ob-

jection) a policewoman to testify that she went to see the defendant and other persons. The State in effect, appellant argues, was trying to bolster the testimony of its other witnesses.

The State contends, however, that this is no so; that the purpose of the testimony was to show an early complaint by the child and the ensuing investigation.

[1] Since nothing in the nature of an inculpatory admission or prejudicial conduct came out in this testimony, we consider this evidence altogether harmless. Supreme Court Rule 45.

II

[2] The trial judge gave one of the defendant's written requested charges and thereafter added, on his own, "Consent has nothing to do with it. A child under the age of 16 is incapable of giving his or her consent." To this remark no exception was taken. Hence, there is no matter reserved for our consideration. See Hubbard v State, 283 Ala. 183, 215 So.2d 261.

III

[3] The third point raised by appellant is a claim that the testimony of the victim of this crime is required to be corroborated and that another boy who was present on two occasions was, in effect, another accomplice of the defendant.

[4] This construction of § 307, T. 15, 1940 Code, is impermissible. The statute about child molestation, very much like the statutes against carnal knowledge of girls under the age of consent, is directed at acts toward children and not at acts participated in by two persons, as in the case of say, sodomy, as illustrated in LaBryer v. State, 45 Ala.App. 33, 222 So.2d 361.

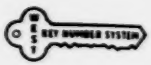
In a case involving this selfsame statute, Alldredge v. State, 45 Ala.App. 171, 227 So.2d 803, this Court said:

"No requirement of corroboration presented in this record. Blocker State, 40 Ala.App. 658, 120 So.2d 9[illegible]

Having considered the entire record under T. 15, § 389, Code 1940, we are of the conclusion that the judgment below is due to be

Affirmed.

All the Judges concur.



**In re Ralph Oliver DENNY**

**v.**

**STATE.**

**Ex parte Ralph Oliver Denny.**

**SC 247.**

**Supreme Court of Alabama.**

**March 15, 1973.**

Certiorari to the Court of Criminal Appeals.

Bill McCollough, Jr., Birmingham, for petitioner.

HEFLIN, Chief Justice.

Petition of Ralph Oliver Denny for Certiorari to the Court of Criminal Appeals to review and revise the judgment and decision of that Court in Denny v. State, [illegible] Ala.App. —, 274 So.2d 650.

Writ denied.

MERRILL, HARWOOD, MADDOX and FAULKNER, JJ., concur.